Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

No. 86-866

ANTOINETTE MORIARTY
and KATHLEEN MORIARTY,
Petitioners

-vs-

FAIRFIELD COMMONS CONDOMINIUM
ASSOCIATION & CARL ARMSTRONG, M.D.
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS
SIXTH APPELLATE DISTRICT
LUCAS COUNTY, STATE OF OHIO

RESPONDENT'S BRIEF IN OPPOSITION

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The Respondents, Fairfield Commons Condominium Association and Carl Armstrong, M.D., respectfully request that this Court deny the petition for writ of certiorari seeking review of the decision of the Court of Appeals for the Sixth Appellate District, Lucas County, State of Ohio in this case.

REASONS WHY THE WRIT SHOULD BE DENIED

1. Neither the decision below nor the record raises the First Question Presented in the Petition.

a. The First Question Presented asks what standards should apply when the enforcement of one party's private property interests "deprives another of his sole opportunity" to exercise his First Amendment rights . . . ?

b. The Court of Appeals below did not decide that question in this proceeding. The facts of record show that petitioners were neither "deprived" from exercising

their First Amendment rights nor was their prohibited activity upon the private portions of the property known as Fairfield Commons their "sole opportunity" to exercise their First Amendment rights.

c. As it is stated in the Petitioners' First Question Presented, an issue of "deprivation" of the "sole opportunity" to exercise First Amendment rights was never raised in the proceedings below. Petitioners were not "deprived" from exercising their First Amendment rights. The trial court merely restricted their exercise of their First Amendment rights to the public sidewalk in front of the subject property when balancing their First Amendment rights against the rights of the property owners as affirmed by the Court of Appeals which applied the law as defined by this Court in Amalgamated Food Employees Union,

Local 590 vs Logan Plaza (1968), 391 U.S. 308 and Lloyd Corporation vs Tanner (1972) 407 U.S. 551. (Pet. A-27 to A-36)

d. In their Statement of the Case, Petitioners cite the issue of abortion as "one of the most devisive issues of our time, and violative of Petitioners religious convictions." (pet. p.7) While that statement is true, there are other issues and beliefs held by others, equally important to those others holding those other beliefs. The freedoms and limitations thereon granted by the First Amendment apply equally to all, irrespective of the specific belief they are promoting. Indeed there is no heirarchy in the importance in beliefs to be expressed. As the freedom of their expression is applied equally, so are the limitations thereon.

e. The Petitioners herein testified that they are "not subject to governmental

law, but subject to God's law." (Pet. A-58, A-78) Because of the Petitioners' specific beliefs, they urge this Court to abandon the rules set forth for all to follow in the exercise of First Amendment rights as an exception because they believe their convictions to be more important than the beliefs of others who are subject to limitations on their exercise of First Amendment rights.

f. The record in this case shows that the Petitioners went way beyond reasonableness in the expression of their First Amendment rights to the point of "imprisoning" unwilling listeners by surrounding a person seeking to enter the subject property. Basic in the exercise of the First Amendment rights is the limitation imposed thereon; "The First and Fourteenth Amendments have never been treated as absolutes. Freedom of

speech...does not mean that one can talk or distribute where, when and how one chooses." Breard vs Alexandria, 341 U.S. 622, 95 L Ed 1233, 71 S Ct. 920.

g. The record in this case further shows that the Petitioners used false statements and misrepresentations to deceive persons entering the premises. Petitioner, Kathleen Moriarity, admitted in testimony that she wore a white lab coat while picketing to deceive persons entering onto the premises to believe that she was part of Respondent, Dr. Armstrong's, clinic staff so that they would stop to talk with her. "Picketing accompanied by false statements or misrepresentation is not protected by the constitutional guaranty of freedom of speech." Casey vs Cincinnati Typographical Union, 45 F 135, 12 LRA 193.

h. Although the Petitioners attempt to characterize themselves as peaceful folk merely attempting to get a message across

to others in the exercise of their First Amendment rights, the transcript of the trial (which the Petitioners have attempted to rely upon in their "Reasons for Granting the Writ, beginning at page 11 of the Petition) has not been appended to the Petition, and shows otherwise.

i. Petitioners argue (Pet. p.11) that the Respondents used State action through the use of "trespass laws" to deny Petitioners access to their "intended audience." The record, as provided by petitioners, is devoid of any substantiation of that allegation. If it were true, they would have provided the pertinent parts of the record in substantiation. Of course the Petitioners' argument fails to allege whether the "trespass laws" involved are criminal trespass or common law trespass in civil matters. This is an attempt to support

their theory that the imposition of restraints upon their claimed First Amendment rights was a "state action" as opposed to an action of an "owner of private property" so as to circumvent the decision of this Court regarding the rules governing this matter in Lloyd Corporation vs Tanner (1972), 407 U.S. 551. (see Pet. A-32).

j. The Civil suit brought by Respondents and the resulting Temporary Restraining Orders, Preliminary Injunctions (consented to by the named Petitioners) and, subsequent, Permanent Injunction issued by the trial court, affirmed by the Court of Appeals could never be characterized as a State action so as to be used by Petitioners as a basis to claim exemption from the Lloyd ruling.

2. Neither the decision below nor the record raises the Second Question Presented in the Petition.

a. The Second Question Presented suggests that the contempt proceedings held on Plaintiffs motion to show cause and the trial court's subsequent issuance of an order to show cause was a criminal or quasi-criminal action.

b. The Second Question Presented also raises a new matter in that Petitioners suggest that they were denied the names of Witnesses prior to trial in the contempt proceedings which suggestion is clearly contrary to the record.

c. The contempt proceedings in question were civil in nature because they involved the disobedience of an order of the court in a civil action for the benefit of the opposing party, Beach vs Beach, 99 O App 428, 59 O Ops 187, 71 OL Abs 115, 134 NE2d 162, and involved a prison sentence (one day) which was conditional, Brown vs Executive 200, Inc., 64 OS2d 250,

18 00 3d 446, 416 NE 2d 610. Also, Section 2705.05 of the Ohio Revised Code provides for a maximum fine of $500.00 and a maximum of 10 days imprisonment.

d. As such, even if the civil contempt proceedings are quasi-criminal, such amounted to a petty offense as defined by this Court in Bloom vs Illinois, 391 U.S. 194, 20 LEd 2d 522, 88 SCt 1477 and Duncan vs Louisiana, 391 U.S. 145, 20 LEd 2d 491, 88 SCt 1444.

e. Due Process required that the person charged with contempt have the right to confront the witnesses against him. The record is straight forward that Petitioners not only had the opportunity to hear the testimony of all witnesses against them in open court but exercised their right to cross examine said witnesses.

f. In their argument, the Petitioners complain that they were denied the names and addresses of all patients and employees

who were present on the property on the dates of the alleged violations of the court's orders. They claim that some of these persons may have been potential witnesses.

g. The Second Question Presented does not refer to "potential" witnesses. No person whose name was not provided to Petitioners was called to testify at the trial on this matter; therefore, the Petitioners were not "denied the names of witnesses prior to trial" and were not denied due process.

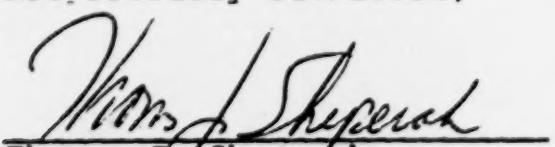
3. Not only does the Petition fail to present questions which were part of the record or were ruled upon below so as to be certifiable to this Court, the Petition does not show "special and important reasons" for this Court to grant the writ of certiorari as are set forth in Rule 17.1 (a), (b) and (c) of the Rules of this

Court. The record shows no conflict in interpretation of law, no impropriety in the proceedings and that substantial justice was done. The Supreme Court of Ohio was correct in finding that Petitioners, in the proceedings below, raised no substantial constitutional question (Pet. A-3).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,



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